

REMARKS

The Office Action dated February 20, 2003, has been carefully considered. On May 20, 2003, the undersigned contacted the Patent Examiner to briefly discuss the claims and teaching of the cited prior art, particularly the old and well known assertion. It is believed that the prior art rejections will likely be removed based upon that discussion. The comments below are consistent with that telephone interview. In the Office Action, the Patent Examiner set forth a restriction requirement (for which an election was previously made via telephone), a number of indefiniteness rejections were advanced, claims 1-3 and 11 were rejected as obvious over the prior art of record while the remainder of the claims were indicated to be allowable. By way of this amendment, Applicant has canceled the apparatus claims, claims 24-40 without prejudice, and plans to prosecute those claims in a separate divisional patent application. Amendments are put forth to correct the indefiniteness rejections. In view of the amendments, Applicant respectfully requests reconsideration and reexamination of the claims.

As noted above, Applicant has amended the claims to address all of the formality or indefiniteness rejections advanced in paragraph five of the Office Action. It is believed that the claims are now adequately clear and that the typographical or antecedent basis issues have been corrected. Removal of the § 112 rejections is therefore respectfully solicited.

Turning to the obviousness rejections, claims 1-3 and 11 were rejected as obvious over Withers in view of Applicant's admitted prior art as set forth in the specification at page 1. Applicant has carefully studied Withers in the background section and neither of these teach "leveling the starch in the tray to a level below the top edge" as is recited in claim 1. The Patent Examiner apparently has acknowledged that the prior art fails to teach this and has stated that "leveling a mold forming material at a point below a top edge of a containment tray is well known and would have been obvious to one of ordinary skill in the art to prevent spillage of mold forming material." Office Action, page 4. This rejection and the assertion that this is old and well known in the art is respectfully traversed pursuant to MPEP § 2144.03. Pursuant to MPEP § 2144.03, Applicant hereby challenges the factual assertion that this aspect of the invention is old and well known in the art which in turn requires the Examiner to support this finding if it is to be maintained with adequate evidence. In fact, in the broadest sense, the present invention teaches leveling the starch to a level below the top edge of the containment tray to prevent starch from spilling out and wasting starch material. Therefore, it is respectfully submitted that the rejection is also being made with the improper use of hindsight, and as such cannot support an obviousness rejection.

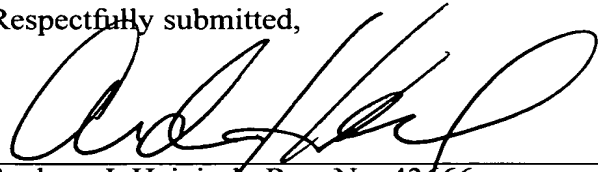
In re Appln. of: Rob Klein
Application No.: 09/871,828

Because the prior art fails to teach a material limitation of "leveling the starch in the tray to a level below the top edge" has as recited in claim 1, it is respectfully submitted that the Patent Office has failed to establish a *prima facie* case of obviousness under MPEP § 2143.03 which requires at a minimum that all claim limitations be taught or suggested in the prior art of record. In view of the foregoing, Applicant respectfully requests the Patent Examiner to withdraw the obviousness rejections and to issue a Notice of Allowance.

Conclusion

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,



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